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August 6, 2007

Ms. Mary F. Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Sent via email

***Re: Comments on Proposed Rule IRPS 07-1
Proposed Rule***

Dear Ms. Rupp:

The Pennsylvania Credit Union Association (PCUA) appreciates this opportunity to provide comments on the proposed rule related to the National Credit Union Administration's (NCUA's) Chartering and Field of Membership Manual (Chartering Manual). As noted in the proposal, the NCUA is proposing this rule to update the community chartering policies in response to NCUA's experience with reviewing applications of credit unions seeking community charters.

The PCUA is a statewide trade association that represents almost eighty-four percent (84%) of the approximate six-hundred-five (605) credit unions located within the Commonwealth of Pennsylvania. To respond to this request for comments, the PCUA consulted with its Regulatory Review Committee and State Credit Union Advisory Committee (the Committee(s)). These Committees consists of twenty-two (22) credit union CEOs who lead the management teams of Pennsylvania federal and state-chartered credit unions. Members of the Committees represent credit unions of all asset sizes.

This matter is of great importance to our membership. As you know, there is significant litigation in Pennsylvania surrounding the issue of credit union community charters. Pennsylvania has been characterized by the credit union trade press as "ground zero for credit union litigation." Many of the CEOs of the credit unions currently involved in litigation over their community charters (both state and federal) participated in the conference call and provided insight from their unique perspectives of being party litigants that have accepted the huge task of defending the community charter (and the relevant regulatory processes) on behalf of all credit unions.

The comments contained in this letter reflect the comments of the Committees and the PCUA staff.

Proposed Chartering Manual Changes:

I. Presumptive Local Communities.

We first would like to commend NCUA in tackling what seems to be the insurmountable task of crafting standards and processes that hopefully will limit, and possibly insulate, NCUA and federally-chartered credit unions from legal challenges to community charter proposals. While not directly applicable or binding, we believe that NCUA's final rule will influence state regulators and state courts, thereby, indirectly impacting state-chartered community credit unions in Pennsylvania. We can certainly appreciate and empathize with NCUA in its mission to "utilize objective measurable standards" to define what constitutes a well-defined local community.

While the idea of creating "presumptive local communities" is initially appealing, we have found that the groups who seek to challenge credit union community charters tend to read the NCUA Chartering Manual literally. The use of the phrase "presumptive local communities" has backfired when credit unions' proposals include communities that fall outside of the presumed well-defined local community definitions.

We support the use of the Office of Management and Budget's (OMB) definitions as providing a starting point for defining well defined local communities through the country. However, our concern is the characterization that a single Core Based Statistical Area (CBSA) is a presumed community. The characterization begs the question of whether any proposal that encompasses more than one (or parts of more than one) CBSA can eventually be proven, established and accepted to be a well-defined local community.

We are confident that the current NCUA board would give due consideration to community charter proposals that fall outside the presumed local community definitions. However, we encourage NCUA to craft language that protects (both now and in the future) the ability of federally-chartered credit unions to serve well-defined local communities that can be supported by a particular set of facts and circumstances that may be unique to both the credit union seeking approval and the specific area or region the credit union proposes to serve.

Accordingly, we submit that NCUA should eliminate the use of the term "presumptive" and, instead, focus on the type of evidence necessary to support the well-defined local community presented by credit unions in their notices and applications.

For example, the evidence and documentation necessary to support a single political jurisdiction and a single CBSA with one dominant city or county can (and should) be minimal and different from the evidence and documentation needed to support an application for a well-defined local community that consists of multiple CBSAs or CBSAs that contain a Metropolitan Division.

It is intuitive that a large geographical, densely populated area, with more than one hub, may require different and more detailed evidence and documentation to support interaction and shared common interests. We support NCUA's need to receive different evidence and documentation to support different types of proposals and believe that NCUA retains the authority to request such documentation when necessary. However, we encourage NCUA to refrain from defining one well-defined local community as presumed and another as something else.

By clearly defining the type of evidence and documentation necessary to support any well-defined local community proposal, NCUA can develop an efficient and effective application process with the flexibility necessary to assure that the federal credit union charter remain viable and able to serve as many people as possible within the constrictors of the law and implementing regulations.

II. Federal Register Notice and Request for Public Comment:

We support the notice and public comment proposed by NCUA. As mentioned previously, several of our member credit unions are currently embroiled in litigation with banking groups over their community charters. In every case, those groups have argued that they did not receive fair notice and opportunity to comment on the credit union community charter notices and applications being challenged.

While we *strenuously* disagree with their assertions, a standardized process for providing notice and an opportunity to the public to comment would eliminate this red herring used by those groups to obtain entry into the legal system. Courts are (and need to be) sympathetic to every citizen's right to due process. A process that provides notice and opportunity to comment has been determined by the Pennsylvania courts to satisfy due process requirements.¹

We do, however, encourage NCUA to enforce the 30 day time period for comments and only extend the comment period in the most extraordinary circumstances. Lingering comment periods can detract from, and interfere with, the ability of credit unions to move forward with their strategic plans and daily operations, which can impact service to its membership.

III. Documentation Requirements for Certain Community Charter Applicants:

As noted above, we support the notion that certain community charter proposals should require different types of evidence and documentation to support a proposed well-defined local community. However, we encourage NCUA to provide a list of items that *could* be used to

¹ LaFarge Corp. v. Commonwealth Insurance Dept., 735 A.2d 74 (Pa. 1999) (adversarial hearing is not required simply because a third party objects to an application); Pennsylvania Coal Mining Assn. v. Pennsylvania Dept. of Insurance, 370 A.2d 685, 693-94 (Pa. 1977) (due process requirements of notice and opportunity to be heard do not require "a full hearing" before agency approval of new black lung insurance rates became effective, because such a hearing would result in "extended delay.").

support a proposal, as opposed to, providing a list of *required* evidence and documentation. We believe that this will incorporate flexibility into the Chartering Manual necessary to assure that NCUA will be able to address the unique factual scenarios that are presented by credit unions across the country that operate in different regions. Flexibility in the area will also ensure that credit unions retain the opportunity to expand and grow with the community and the needs of its membership.

We appreciate the difficulty NCUA faces in this task. Each CBSA, each region, each part of the country is different. The unique characteristics that may support a well-defined community in one area or region of the country may not be relevant to another region or area of the country. We request that NCUA reconsider its “dominant city or county” requirement as a criteria for establishing a well-defined local community. With regard to our state and region, this criterion is too limiting and restrictive. We encourage NCUA to be flexible in analyzing areas that may contain more than one dominant city or county and to provide resources to help clarify and define dominant cities or counties.

Finally, we ask NCUA to reconsider its current practice of focusing on market areas and requiring federal credit unions to prove that a proposed well-defined local community constitutes one market area. We submit that applicants may need to link market areas and establish interaction among market areas but that multiple market areas should not be viewed as necessarily detracting from a well-defined local community. Market areas are difficult to define. Requiring credit unions to show that an area is one market leads to bizarre results and causes unnecessary confusion.

IV. Five-Year Limitation:

The consensus of our group is that the five year limitation on a community charter applicant’s use of the exemption for a previously approved well-defined local community is arbitrary and will be, in most cases, too short of a time period to be meaningful.

Instead, we encourage NCUA to consider tying the exemption to the ten year census findings. If after a new census is conducted, it is determined that a CBSA or other defined statistical area has changed significantly, NCUA could determine that previously approved well-defined local communities that incorporate that statistical area must be supported by new (or additional) evidence and documentation to support interaction and common interests.

By tying the limitation to significant changes to statistical areas triggered by census findings, federally-chartered credit unions that are planning to convert to a community charter or expand an existing charter can reference the most current census findings to determine if the exemption applies or if evidence and documentation is necessary to support their application.

Often, it may take a credit union five years to successfully execute a business plan to convert or expand their charter. We submit that the five year limitation is too short and unnecessarily limits

the ability of a credit union to rely on previously approved community charter applications. Tying the limitation to census findings makes this limitation more meaningful.

V. Rural Districts:

We agree with NCUA's assessment that rural areas often lack the normal indicia that NCUA considers in making a determination that a proposed area is a well-defined local community. We support NCUA's proposal to define a rural district as an area that may lack the traditional characteristics of interaction and shared common interests that are necessary to prove a well-defined local community in areas that involve CBSAs.

However, our group overwhelmingly agreed that the population limits proposed are too small to make this well-defined local community definition meaningful. There are 13 counties in Pennsylvania that do not fall within a CBSA. It is our opinion that NCUA should retain as much flexibility as possible in allowing a credit union to serve a combination of these counties so that consumers located in rural districts are able to obtain and receive the same quality and types of credit union financial products and services that are available to consumers in more populated areas.

VI. Community Charter Mergers:

We appreciate NCUA's willingness to review its current merger policy with regard to community charter credit unions. The current policy that prohibits a community chartered credit union from merging into a single occupational/associational, or multiple common bond credit unions, except in an emergency merger, has had a stifling effect on community chartered credit unions' growth in Pennsylvania.

Our member credit unions submit that it is absolutely essential that community chartered credit unions be able to merge with single occupational/associational or multiple common bond credit unions. Mergers play a significant role in the future growth and overall viability of a credit union. We encourage NCUA to be as flexible as possible in considering mergers proposed by community charters, particularly when two credit unions have reached the conclusion that a merger is in the best interests of the respective credit union members and that the resulting credit union has established its ability to serve those members.

The CEOs of some of Pennsylvania's smaller and mid-sized community chartered credit unions submit that the ability of NCUA to be flexible regarding mergers is necessary for their survival. We encourage NCUA, in its review of merger proposals regarding two consenting credit unions, to place more emphasis on the ability of the resulting credit union to serve the members.

If NCUA feels compelled to place a field of membership limitation on community chartered credit union mergers, then we request that NCUA apply a majority of members test. If after the proposed merger, the majority of the members of the resulting credit union are within the credit

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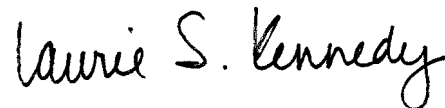
union's existing field of membership the merger is permissible. Some of our credit unions have been required to divest branches they acquired in a merger transaction that consisted of members that they were ready, willing, and able to serve.

Finally, in the context of revisiting current policy, we also request that NCUA consider its policy of requiring a credit union that is converting from a community charter to cease serving pre-existing single employee/associational groups. It is our position that those groups should be grandfathered provided that the converting credit union can prove to NCUA that it is able to continue serving those groups as a community charter.

In closing, while we certainly appreciate NCUA's efforts to establish definitive definitions in the credit union community charter arena, particularly in the interest of minimizing litigation related to community charters, the common theme that resonated throughout our discussion was that NCUA needs to maintain its flexibility to respond to the needs of community chartered credit unions and the unique aspects of the communities they serve.

Thank you again for this opportunity to comment on behalf of Pennsylvania credit unions. Please feel free to contact me or any of the PCUA staff at 1-800-932-0661 if you have any questions or if you would like to discuss our comments.

Sincerely,

A handwritten signature in black ink that reads "Laurie S. Kennedy". The signature is written in a cursive, flowing style.

Laurie S. Kennedy
Associate Counsel

LSK:llb

cc: Association Board
Regulatory Review Committee
State Credit Union Advisory Committee
J. McCormack
R. Wargo
M. Dunn, CUNA